

**DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF PSYCHOLOGY**

FINAL STATEMENT OF REASONS

Hearing Date: November 14, 2009

Subject Matter of Proposed Regulations: Renewal of License - Disclosure of Discipline & Criminal Convictions

Section Affected: 16 CCR 1381.7, 1381.8 & 1381.9

Updated Information

The Initial Statement of Reasons is included in this file. Information contained therein is updated as follows:

A notice of availability of modified text was mailed on February 11, 2010, with a 15-day public comment period that closed February 26, 2010. The Board modified the language in section 1381.7(b-d) to reflect that the proposed regulations apply to renewal of a license **or** registration to include psychological assistant registrations, in addition to licensed psychologists.

The Board modified the language in section 1381.7(b) to reflect that the proposed regulations apply to a license or registration that expires after June 30, 2010, rather than July 1, 2010, solely as a technical change because most board licenses and registrations expire on the last day of the month.

The Board also modified the language in section 1381.7(b) to reflect that an “electronic” record of the submission of fingerprints must exist in the Department of Justice’s criminal offender record identification (CORI) database to ensure that any licensee or registrant who has previously been fingerprinted manually has an electronic record in the Department of Justice CORI database to ensure the Board receives criminal background and subsequent conviction information timely and electronically.

The Board modified the language in section 1381.7(c) to raise the fine threshold for a reportable traffic infraction from \$300.00 to \$500.00. The proposed regulations would now require an individual who has been convicted of any violation of the law as a condition of renewal to disclose such violations, omitting traffic infractions under \$500.00 for any violation, not involving alcohol, a dangerous drug, or a controlled substance.

A second notice of availability of modified text was mailed on July 28, 2010, with a 15-day public comment period that closed August 12, 2010. This modification deletes the language included in section 1381.9 subsection (b) and retains the language included in subsection (a) as section 1381.9. The Board determined that the language included in section 1381.9(b) should not be included in this proposal since it pertains to continuing education requirements for a cancelled license. Due to an oversight, the provisions of section 1381.9(b) were not described in the Initial Statement of Reasons.

The Board again modified the language in section 1381.7(b) to change the licenses subject to the new requirement from those that expire after June 30, 2010, to those that expire after December 31, 2010, to allow additional time for review, approval and implementation of this proposal.

The Board made some non-substantive changes to the Order of Adoption on February 2, 2011 for clarification. All changes were within the scope of the proposed changes referenced in the notice and the initial statement of reasons.

Under “Specific Technologies or Equipment” the Board stated in the Initial Statement of Reasons that this regulation does not mandate the use of specific technologies or equipment. Due to the requirement that an “electronic” record must exist in the Department of Justice CORI database, all licensees or registrants must be fingerprinted by an authorized Live Scan Facility.

Pursuant to Penal Code Section 11077.1, the Department of Justice (DOJ) shall accept fingerprint images and related information to process CORI requests only if those images and related information are electronically transmitted. Based on the regional unavailability of electronic transmission sites or when departmental processing procedures show a need, the DOJ may accept hard fingerprint cards when an individual submits a request for an exemption to the electronic submission requirement. No other reasonable alternatives exist for the submission of fingerprints through the Department of Justice for the purpose of conducting criminal history background investigations.

All other information contained in the Initial Statement of Reasons is as originally stated.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

This regulation will not have a significant adverse economic impact on businesses.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Objections or Recommendations/Responses:

The Board received four written comments in response to the initial notice of proposed changes. No oral comments were received at the public hearing.

Bill Davis, Ph.D. submitted written comments asking if this proposal is politically expedient and stated the process will inconvenience him and possibly waste his time.

The Board rejected Dr. Davis’s comment based on the need for the Board to have an

electronic record of all licensees and registrants fingerprints on file with the Department of Justice to ensure the Board has knowledge of background information including any subsequent arrest, criminal conviction, or disciplinary action taken from other jurisdictions to adequately protect consumers of psychological services.

The Board received written comments from Dr. Philip Stahl and Dr. Maureen Grabowski asking procedural questions about how to determine whether they have fingerprints on file, and suggested a mechanism be in place for verifying this information.

These comments did not pertain to the substance of the regulations themselves. The Board explained that staff will be working with the Department of Justice to ensure that all affected licensees are notified in a timely manner. The Board will provide information on its web site and at the time of renewal with detailed parameters identifying which licensees or registrants may be required to have their fingerprints submitted electronically via Live Scan.

Dr. Leonard Schwartzburd submitted a written comment concerning the requirement that traffic infractions resulting in a fine of \$300.00 or more be reported and stated that this amount seemed overly low due to some jurisdictions that carry fines greater than this amount for infractions, such as red light violations, that do not suggest characteristics from which the public needs protection from psychologists in practice. Dr. Schwartzburd suggested a complete list of infractions and those that raise concern about behaviors or judgments and their affect on professional practice be specified in the reporting requirements.

The Board accepted Dr. Schwartzburd's comment regarding the requirement to report any traffic infraction that carries a fine over \$300.00 that does not involve alcohol, dangerous drugs or controlled substances, and raised the threshold to \$500.00 based on an understanding that many common traffic infractions could be above \$300.00 but below \$500.00. The Board issued a 15-day notice for public comment on February 11, 2010, regarding the proposed modification.

The Board rejected Dr. Schwartzburd's suggestion that the Board provide a complete list of infractions and specify which infractions raise concerns about their affect on professional practice as a psychologist and the need to specify in the reporting requirements. The Board reviews all required criminal background information and makes a determination on a case-by-case basis whether a licensee or registrant has criminal history that would constitute grounds for denial of an application, or discipline of a license or registration.

The Board received eight written comments in response to the 15-day notice issued on February 11, 2010.

The Board received procedural comments and questions from Dr. Martin Bragg, Dr. Laurie Windle, Dr. Patricia Ditton, Dr. Jessica Berry, and Dr. Russell Jordan regarding how an individual determines whether prints are on file, if a licensee or registrant has submitted fingerprints to another agency if the requirement would be met, the timeframe for compliance, and how the Board will notify individuals who are not in compliance.

These comments did not pertain to the substance of the regulations themselves. The Board explained that staff will be working with the Department of Justice to ensure that all affected licensees are notified in a timely manner. The Board will provide information on its web site and at the time of renewal with detailed parameters identifying which licensees or registrants may be required to have their fingerprints submitted electronically via Live Scan. Background information cannot be shared with third parties, therefore unless an individual has previously submitted fingerprints electronically to the Board they will be required to submit their fingerprints via Live Scan using the Board's Live Scan form available on its web site.

Dr. Kern-Jones submitted a written comment in support of the proposed regulations stating two concerns. Dr. Kern-Jones commented that language should be included to protect the current licenses of psychologists if the federal records are lost by no fault of the psychologist, and that the psychologist should be required to submit new fingerprints but should be given sufficient time to do so. Dr. Kern-Jones also commented that if an individual has fingerprints that are not legible or cannot be distinguished that licensees should be allowed to maintain their current license as active until the processing is complete and while an additional set of fingerprints are submitted and processed, if necessary.

These comments did not pertain to the substance of the regulations themselves. The Board explained that the Department of Justice has a process for obtaining background information for individuals whose fingerprints are difficult to obtain. The Board explained that this regulation is not intended to be punitive, rather a method of ensuring that the Board has all licensees and registrants background information on file to enable the Board to receive all subsequent arrest information and to enhance consumer protection by conducting a more thorough screening of licensees and registrants.

Dr. Schwartzburd submitted additional comments in response to the 15-day notice stating that the modification raising the fine threshold from \$300.00 to \$500.00 does not address the problem that he raised. Dr. Schwartzburd stated that making any infraction below a required amount reportable upon license renewal is an unwarranted abuse of the right to privacy as there are many infractions that can result in a fine of \$300.00 or more that do not involve conduct that in any reasonable way affects due cause to assume that ones professional practice is affected and therefore the regulation exceeds the purview of the Board.

The Board rejected Dr. Schwartzburd's comment and stated that the Board reviews conviction information to make a determination whether the violation is substantially related to the practice of psychology on a case-by-case basis, and that just because disclosure is required it doesn't mean that all convictions result in an action being taken against a licensee. The fine threshold pertains to the requirement to disclose any conviction omitting traffic infractions under \$500.00 that do not involve alcohol, a dangerous drug, or a controlled substance.

The Board received a written comment from Dr. Sparta stating that he holds an Educational Psychology license with the Board of Behavioral Sciences and they are now asking him to complete Livescan. Dr. Sparta is wondering if the Board of Psychology will also be requiring Live Scan and if so can he complete both requests at

the same time.

These comments did not pertain to the substance of the regulations themselves. The Board explained that individuals could complete the requirement prior to the approval of this proposal however; it may be an unnecessary expense if the Board determines that an electronic record already exists. The Board explained that there is no mandate for licensees and registrants to be electronically fingerprinted until the regulation has been approved and implementation has begun.

The Board received three written comments in response to the 15-day notice issued on July 28, 2010.

The Board received procedural questions from Dr. Becker, Dr. Jordan, and Dr. Yellen regarding how the Board will notify licensees and registrants, is there a mechanism in place to determine if this requirement has already been met and if not will there be a policy in place stating the specific mechanism for determining whether an electronic record exists. The proposed regulations also indicate that a renewal can be held up if a licensee or registrant fails to meet the requirements, therefore, is there a need to have my fingerprints submitted before I renew this month.

These comments did not pertain to the substance of the regulations themselves. The Board explained that staff will be working with the Department of Justice to ensure that all affected licensees are notified in a timely manner and will provide information on its web site and at the time of renewal with detailed information identifying which licensees or registrants may be required to have their fingerprints submitted electronically via Live Scan. Background information cannot be shared with third parties; therefore unless an individual has previously submitted fingerprints electronically to the Board, they will be required to submit their fingerprints via Live Scan using the Board's Live Scan form available on its web site. The Board modified this proposal to delay implementation for a license or registration that expires after December 31, 2010.